

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 779 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No
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BHAGWATIPRASAD KESHAVALAL UPADHYAY

Versus

GORDHANBHAI HIRABHAI - DECD. THRO' HEIRS

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Appearance:

MR MH DAYAMAKUMAR for Petitioners  
MR RC JANI for Respondents

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/03/99

#### ORAL JUDGEMENT

Rule. Mr RC Jani, learned counsel waives service of Rule for the respondents.

2. In this revision application, the original plaintiffs - respondents in Civil Appeal have challenged the order dated 9.3.1998 passed by the learned 3rd Extra Assistant Judge, Baroda condoning the delay in filing the appeal.

3. The appeal was filed against the judgment and decree dated 21.12.1995 passed by the Civil Court, Baroda

in Regular Civil Suit No. 133/85. The suit filed by the petitioners herein was decreed. The defendants, therefore, filed appeal. The application for condonation of delay was numbered as Misc. Civil Application No. 170/96. The ground urged in the application for condonation of delay was that after the order was passed by the trial Court on 21.12.1995, the appellants were advised that the appellants will have to file an appeal against the judgment passed by the learned Civil Judge (S.D.) before the High Court within 90 days. However, thereafter another lawyer had advised that the appeal will have to be filed before the District Court. In view of the aforesaid mistaken advice, the appellants had earlier not filed the appeal within a period of 30 days before the District Court, but subsequently applied for the certified copy on 14.3.1996 and the same was obtained on 8.7.1996 and, therefore, the appeal was filed on 8.7.1996. The learned 3rd Extra Assistant Judge, Baroda therefore allowed the application for condoning delay and passed the order for registering the appeal.

4. At the hearing of this revision application, the learned counsel for the petitioners-respondents in appeal before the District Court submitted that no details were given about the name of the learned advocate who was consulted subsequently nor the particulars about the date are given. Moreover, the learned 3rd Extra Assistant Judge also committed a mistake by referring to the appeal against the order passed below Exh. 5 though the appeal was filed against final decree in the civil suit.

5. In response to the notice issued by this Court, Mr RC Jani, learned counsel has appeared for the respondents. The notice was issued on 23.9.1998 making it returnable on 11.11.1998 and the operation of the impugned order was stayed till the returnable date and thereafter on 28.1.1999 the said interim relief was vacated.

6. Having regard to the facts and circumstances of the case and particularly the fact that the appeal against the decree in question lies before the District Court and not before the High Court, it can be said that the respondents herein i.e. the appellants before the District Court had made bonafide mistake in waiting for a period of 90 days. The delay, therefore, deserves to be condoned. However, in view of the fact that a part of the delay was attributable to the respondents herein in as much as they did not apply for certified copy immediately after the judgment, some costs should be required to be paid by the respondents herein to the

present petitioners.

7. In the result, this Civil Revision Application is dismissed in so far as the revision application challenges the order dated 9.3.1998 condoning delay in filing the appeal but the respondents herein shall pay the present petitioners costs of Misc. Civil Application No. 170/96 quantified at Rs. 1000/- (Rupees One thousand only) within two weeks from today.

8. Subject to the aforesaid, the revision application is dismissed. Rule is discharged with no order as to costs of this revision application.

Sd/-

March 3, 1999 (M.S. Shah, J.)

sundar/-